REMARKS

Claims 1, 3-23 are in the case and presented for consideration.

Claim Objections

By this amendment, claim 3 has been amended to depend from claim 1. Claim 3, now presented, no longer contains the claim dependency issue raised by the Examiner. Accordingly, reconsideration and withdrawal of this objection is respectfully requested.

35 U.S.C. § 112, first and second paragraph

In the Office Action, claims 1 and 3-23 are rejected under 35 U.S.C. § 112, first and second paragraph. The Examiner alleges that claims 1 and 3-23 recite a feature (i.e., "wherein each cluster is comprised of a segment of tangible items that exhibits a characteristic similarity") that is not described or explained in the specification. See pages 2-3 of the January 31, 2006 Office Action.

In response, Applicant respectfully traverses the above ground of rejection, and directs Examiner's attention to the following relevant paragraphs of the specification which discusses the feature pertaining to the items or segments, e.g., of television programs, within each cluster. For example, the specification discusses that the viewing history of a selected third party is partitioned into a number of clusters, and that a given cluster may correspond to television programs or data points that are similar to one another in some way (see, e.g., page 5, lines 21-24, of the specification). The specification further discusses that a given cluster may also correspond to *a segment of the television program's or data points* that exhibit a specific pattern (see, e.g., page 5, lines 24-26, of the specification). Accordingly, the claim feature reciting that each cluster comprises a

segment of tangible items that have characteristic similarity is well supported by the specification, and is not indefinite or ambiguous.

Examiner's interpretation of the recited feature for purposes of art rejection is also respectfully traversed. To clarify, a third party viewing history is partitioned into clusters, and each cluster may contain items or segments that are similar to one another in some way (see discussion above).

Applicant further presumes that claims 1 and 3-23 may have also been rejected because the claim language contains the term "tangible" items, which does not literally appear in the specification. However, terms which are well known in the art need not be described in the specification. Applicant respectfully maintains that it is well known in the art of television programming and the present invention that *a scene or segment of a television program may be composed of tangible objects* (see, e.g., U.S. Patent 4,689,681 to Jackson, col. 1, lines 8-11, stating that:

> "A television picture is a representation in substantially planar form of a scene that is composed by the producer of a television program. The scene may be composed of tangible objects...").

Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

35 U.S.C. § 102

Claims 1 and 3-23 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,758,257 to Herz, et al.

As per claims 1, 14, 17, 22 and 23, the Examiner alleges that Herz, et al. disclose the invention recited in these claims.

Specifically, the Examiner alleges that Herz, et al. (col. 5, lines 24-54) teach "partitioning a third party selection history into a plurality of clusters..." (see page 4 of the

January 31, 2006 Office Action).

Contrary to the Examiner's interpretation, Herz, et al., as read by Applicant, teach that a customer may have a plurality of customer profiles (see, e.g., Herz, et al., col. 5, lines 23-28).

Herz, et al. also teach "*clustering customer profiles* for combinations of customers expected to view the programs..." (see, e.g., Herz, et al., col. 5, lines 33-37). By "*clustering*", Herz, et al. meant that the profiles of different customers are *combined or grouped* to form a *single profile* to reflect the viewing preference of a given combination of customers, such as mom, dad and children (see, e.g., Herz, et al., col. 5, lines 37-40).

On the contrary, Applicant's claimed invention includes a feature of *partitioning a third party's viewing history into clusters (rather than grouping the profiles of different customers as taught by Herz, et al.)*, and each cluster contains items that are similar to one another in some way (see, e.g., page 5, lines 17-24, of the specification). The user then selects one or more clusters of the third party's viewing history and replaces or supplements his or her viewing history with the cluster(s) of the third party (see, e.g., page 6, lines 4-13, of the specification).

Herz, et al. further teach *creating different profiles for each customer using an agreement matrix* (see, e.g., Herz, et al. col 5, lines 23-28 and 40-43), where the plurality of profiles are representative of the customer's changing preferences (see, e.g., Herz, et al. col 5, lines 25-28). However, Herz, et al. still fail to teach or disclose partitioning the *viewing history of a third party into clusters and inserting one or more of those clusters into the user's viewing profile to create a modified user's profile.*

The Examiner further alleges Herz, et al. (col. 34, lines 57-60; col. 38, lines 10-15) teach that "each cluster is comprised of a segment of tangible items that exhibit a

characteristic similarity..."

Herz, et al., as read by Applicant, teach creating the initial profile of a new customer and the content profile of new programming based on customer viewing habits (see, e.g., Herz, col. 37, lines 50-67).

> "[T]he customer profile of new customers should look like the content profiles of the movies and/or shows they watch, and the content profiles of new movies should look like the customer profiles of the customers who watch these movies"

(see, e.g., Herz, et al., col 38, lines 1-5).

All the movies or shows watched by all the customers are tracked so that customers who watch more movies or shows in common are more likely to be placed in the same group (see, e.g., col. 38, lines 8-12, 18-20, 24-28, 35-40, 42-41, and 45-50). However, Herz, et al. still fail to teach or disclose the step of *clustering the viewing history* of a third party *and then using the one or more clusters from the viewing history of the third party to supplement or replace portion(s) of the user's viewing history to create a modified user's viewing preference*. Therefore, there is no anticipation because Herz, et al. teach assigning customers with a profile(s) that reflect their viewing preferences or to groups that have similar viewing preferences, rather than, e.g., selecting and inserting *clusters* from a third party's viewing history, which will have different viewing preferences than the user.

Herz, et al. further teach that "each customer could adopt the customer profile of other individuals or programs such as 'celebrity' profiles..." (see, e.g., Herz, et al., col. 49, lines 1-3). However, Herz, et al. still fail to teach, e.g., partitioning the viewing history of the celebrity into clusters and modifying the user's viewing history with *one or more clusters of the celebrity's viewing history*.

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Accordingly, for the reasons discussed above, the claimed invention cannot be anticipated because the *claims do not read on the teachings of the Herz, et al. reference.* Reconsideration and withdrawal of this rejection and allowance of claims 1, 14, 17, 22 and 23 is respectfully requested.

Claims 2-6 depend from claim 1 and therefore contain the features recited in claim 1 and are believed to be in condition for allowance for at least the same reasons given for claim 1 above. Accordingly, reconsideration and withdrawal of the rejection to claims 2-6 is respectfully requested.
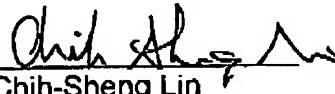
Claims 7 and 18 recite similar subject matter as claim 1 and therefore contain the features recited in claim 1 and are believed to be in condition for allowance for at least the same reasons given for claim 1 above. Accordingly, reconsideration and withdrawal of the rejection to claims 7 and 18 is respectfully requested.

Claims 8-13, 15-16 and 19-21 depend from independent claims 7, 14 and 18, respectively, and therefore contain the features recited in claim 7, 14 and 18 and are believed to be in condition for allowance for at least the same reasons given for claims 7, 14 and 18 above. Accordingly, withdrawal of the rejection to claims 8-13, 15-16 and 19-21 is respectfully requested.

Accordingly, the application and claims are believed to be in condition for allowance, and favorable action is respectfully requested. No new matter has been added.

If any issues remain, the Examiner is respectfully invited to contact the undersigned

at the number below to advance the application to allowance.

Respectfully submitted,

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